IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 265 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUSA HAJI GANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 265 of 1990

MR CU SHELAT for appellant No. 1

Mr.M.A.Bukhari, learned Addl.P.P.

for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 01/11/2001

ORAL JUDGEMENT

1. The appellant -original accused No.3 has challenged the order of conviction and sentence recorded by the learned Addl. Sessions Judge, Rajkot dated

12.1.1990 passed in Sessions Case No.101/88 convicting the accused for the offences under Sections 307 and 324 of I.P.C. as well as under Section 135 of the Bombay Police Act and sentencing him to suffer R.I. for 3 years and a fine of Rs.500/-- in default of payment of fine, to undergo 3 months R.I. for the offence under Section 307 of the I.P.C. and also sentencing him to suffer R.I. for 1 year and a fine of Rs.100/-- and in default of payment of fine, to undergo 1 month's R.I. for the offence under Section 324 of the I.P.C. He was also sentenced to undergo 7 days' imprisonment and a fine of Rs.25/-- and in default of payment of fine, to undergo 2 days' R.I. All the sentences were ordered to run concurrently.

2. I have heard this matter earlier and with the help of the learned Addl.P.P. I was taken through the evidence as well as the judgment under challenge. As per earlier order dated 16.10.2001, considering the request made on behalf of Mr.C.U.Shelat for the appellant, the matter was kept today for hearing. It was also pointed out to me that the appellant had expired and accordingly I directed Mr. Bukhari, learned Addl.P.P. to inquire into the matter. When the matter has reached for hearing today, Mr. Bukhari, learned Addl.P.P. appearing for the State, has tendered the certified copy of the F.I.R. registered at Rajkot Taluka Police Station, Rajkot City dated 11.8.93 whereby C.R.No.374/93 was registered. The said certified copy is taken on record. As found from the F.I.R., a complaint was field by one Shri Rahim Hajibhai resident of Sardhar, Taluka Rajkot against the accused Patel Parshottam Bhagwanji and 17 others. As per the said complaint, offences registered against the said accused for the offences under Sections 302, 307, 324, 120B, 143, 147, 148 and 159 of the I.P.C. as well as 37(1) and 135 of the Bombay Police Act, wherein the accused had committed murder of Musa as well as caused injury to Hajibhai, the father of the appellant. As per the said F.I.R., the present appellant Musa Haji Ganchi is no more as he was murdered by the accused in C.R.No.374/93. Mr. Bukhari, learned Addl.P.P. has also tendered the copy of the fax message issued by the office of the Public Prosecutor on 17.10.2001 in favour of Police Commissioner, Rajkot City calling for the information whether the appellant Musa Haji Ganchi is alive or not and in response to the said fax message, the office of the Public Prosecutor has received the certified copy of the F.I.R. registered at Rajkot Taluka Police Station, Rajkot City on 11.8.93. Copy of the fax message dated 17.10.2001 is taken on record.

2. As found from the said F.I.R., the appellant Musa Haji Ganchi was murdered and, therefore, the present Appeal does not survive and the Appeal accordingly stands abated. Mr.C.U.Shelat, learned counsel appearing for the appellant, also confirms the fact that the appellant is no more in view of the murder, which had taken place on 11.8.93. The Appeal is accordingly disposed of as abated.

The record and proceedings is ordered to be sent back to the trial court forthwith.

(D.K.Trivedi,J)

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